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present cannot be transferred to another district. The question is open to argument, but we do not feel ourselves justified in disregarding these rulings. We therefore dismiss the application. At the same time we cannot approve of the action taken by the District Magistrate, however well-intentioned that action may have been, specially having regard to the fact that the case might come before himself in appeal under section 406 of the Code of Criminal Procedure.

APPELLATE CIVIL.

1907
July 24.

Before Mr. Justice Banerji and Mr. Justice Aikman.

LOHRE (PLAINTIFF) *v.* DEO HANS AND ANOTHER (DEFENDANTS).*

Appeal—Parties—Estoppel—Procedure.

The plaintiff having obtained a decree against one of two defendants acquiesced in that decree, but the defendant judgment-debtor appealed, making the other defendant also a party to his appeal, with the result that the plaintiff's suit was dismissed. *Held* that it was not open to the plaintiff in second appeal to contend that the Court below should have made a decree against that defendant with regard to whom he had acquiesced in the dismissal of his suit. *Farzand Ali Khan* v. *Bismillah Begam* (1) followed.

THE plaintiff in this case sued a tenant, one Deo Hans, for rent. The tenant pleaded payment of the whole rent to Sita Ram, the plaintiff's co-sharer in the holding. The Court of first instance decreed the suit as against Sita Ram and dismissed it *qua* Deo Hans. Sita Ram then appealed, making Deo Hans a party to his appeal, but the plaintiff acquiesced in the decree which he had obtained against Deo Hans alone. The lower appellate Court (District Judge of Agra) allowed Sita Ram's appeal, and dismissed the suit. The plaintiff appealed to the High Court, urging that the Court below was wrong in dismissing the plaintiff's claim as against both defendants.

Pandit *Mohan Lal Sandal*, for the appellant.

Pandit *Baldeo Ram Dave*, for the respondent Sita Ram.

BANERJI and AIKMAN, JJ.—The suit which has given rise to this appeal was brought by Lohre, appellant, against Deo Hans, respondent, for arrears of rent for the years 1309 to 1312 Fasli.

* Second Appeal No. 158 of 1906 from a decree of F. E. Taylor, District Judge of Agra, dated the 12th of December 1905 reversing a decree of Habib-Ullah, Assistant Collector, Agra, dated the 28th of June 1905.

(1) (1904) I. L. R., 27 All., 23.

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The plaintiff joined as a defendant to the suit Sita Ram, respondent, who, he said, was his co-sharer and had refused to join in bringing the suit. The Court of first instance dismissed the claim as against Deo Hans and decreed it against Sita Ram. The plaintiff acquiesced in this decree and did not appeal against that part of it which dismissed his claim against Deo Hans. Sita Ram appealed, making the plaintiff and Deo Hans respondents to the appeal. The lower appellate Court decreed the appeal and dismissed the suit. The plaintiff has preferred this appeal, and contends that the Court below ought to have made a decree in his favour against Deo Hans. This contention is untenable. The plaintiff having submitted to the decree of the first Court dismissing the claim against Deo Hans, and there being no appeal by the plaintiff against Deo Hans, the appellate Court could not on the appeal of Sita Ram make a decree in favour of one respondent against the other. Several rulings having been cited to us, but the case most in point is that of *Farzand Ali Khan* v. *Bismillah Begam* (1). This ruling is against the appellant. The appeal fails and is accordingly dismissed with costs.

Appeal dismissed.

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October 30.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

BALAK PURI (DEFENDANT) *v.* DURGA (PLAINTIFF) AND OTHERS (DEFENDANTS).*

Civil Procedure Code, section 365—*Death of sole plaintiff—Claim of one of the defendants to continue the suit as plaintiff—Abatement of suit.*

The original plaintiff sued for redemption of a mortgage executed by her father. She claimed as the only unmarried daughter of three, arraying as defendants, besides the mortgagee, her surviving married sister and the minor children of the second sister, deceased. During the pendency of the suit the plaintiff died. *Held* that, the claim being personal to the plaintiff, the suit abated and that the surviving sister could not be permitted to carry on the suit in substitution for the original plaintiff.

THIS was a suit brought by one Musammat Parbhawati, one of the four daughters of one Nar Singh Bhan, for redemption of two mortgages of the 7th of July 1871 and 26th of September 1871, executed in favour of the Akhara Panchaiti to secure two

* First Appeal No. 91 of 1905 from a decree of Rajnath Sahib, Subordinate Judge of Allahabad, dated the 24th of March 1905.

(1) (1904) I. L. R., 27 All., 23.

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sums amounting together to Rs. 6,000. Nar Singh Bhan died on the 1st of July 1886, and upon his death some litigation ensued between the parties who were interested in his property, and on the 19th of February 1895 possession of the substantial part of the mortgaged property was surrendered by the Akhara to the surviving three daughters of the mortgagor; only a small tiled house of little or no value remaining with the mortgagees. The plaintiff Musammat Parbhawati was at this time a minor. The present suit was instituted by Musammat Parbhawati on the 12th of May 1904, but on the 5th of December 1904, after the pleadings had been filed by the respective parties, the plaintiff died. Upon her death, however, an application was made by Musammat Durga, one of the plaintiff's married sisters, a defendant in the suit, to have her name removed from the list of defendants and substituted as the sole plaintiff. The Court below acceded to this application, caused the name of Musammat Durga to be entered on the record as plaintiff in place of her sister and passed a decree in her favour. From this decree the defendant Balak Puri appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* and Babu *Durga Charan Banerji*, for the appellant.

Maulvi *Rahmat-ullah* and Babu *Jogindro Nath Mukerji*, for the respondents.

STANLEY, C.J., and BURKITT, J.—This is an appeal against the decree of the Subordinate Judge of Allahabad in a suit brought by Musammat Parbhawati, one of the four daughters of one Nar Singh Bhan, for redemption of two mortgages of the 7th of July 1871 and 26th of September 1871, executed in favour of the Akhara Panchaiti to secure two sums amounting together to Rs. 6,000. Nar Singh Bhan died on the 1st of July 1886, and upon his death some litigation ensued between the parties who were interested in his property. It is unnecessary to deal with this litigation; suffice it to say that on the 19th of February 1895 possession of the substantial part of the mortgaged property was surrendered by the Akhara to the three surviving daughters of the mortgagor; only a small tiled house of little or no value remained with the mortgagees. The plaintiff Musammat Parbhawati was at this time a minor. It is alleged by the Akhara

Panchaiti that on the 5th of February 1895 a sum of Rs. 5,700 was paid to the daughters of Narsingh Bhan as representing surplus collections of the profits recovered by the Akhara as mortgagees. Whether or not this sum was paid it is unnecessary for us to determine. We did not think it necessary, in the view which we take of the case, to ask Mr. *Banerji*, the learned advocate for the appellant, to lay before us the evidence in support of this alleged payment. The learned Subordinate Judge appears to have had considerable doubt as to whether this payment was made or not; but as we have said, however this may be, we do not consider it necessary to determine it in the present appeal.

On the 12th of May 1904 the present suit was instituted by Musammat Parbhawati abovementioned, but on the 5th of December 1904, after the pleadings had been filed by the respective parties, Musammat Parbhawati died. Now on a perusal of the plaint it is clear beyond doubt that the right which she claimed was a personal right. Her case was that as the unmarried daughter of her father, Nar Singh Bhan, she was at the time of his death entitled to the entire of his property to the exclusion of her sisters. Her claim is set forth in the second paragraph of the plaint. Her surviving sister Musammat Durga, and also the heirs of a deceased sister, were sued as defendants in the suit. If Musammat Parbhawati had lived and the suit had come to a hearing during her life and been determined in her favour, she would have been entitled to the exclusion of Musammat Durga and the other defendants to the property in dispute, for the estate of a Hindu daughter, and that estate would have determined with her death, and, therefore, it appears to be clear that her suit was one to establish a personal right, and it did not survive, but abated upon her death. Upon her death, however, an application was made by Musammat Durga who was, as we have said, a defendant in the suit, to have her name removed from the list of defendants and substituted as the sole plaintiff. The Court below acceded to this application, we think improperly. The claim of the plaintiff Parbhawati being a personal claim did not survive; on the contrary the suit abated upon her death, and it was not competent for the Court below to substitute Musammat Durga as plaintiff in her place.

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We now make the order which the Subordinate Judge should have, in our opinion, passed, and declare that the suit abated on the death of the original plaintiff, Musammat Parbhawati, and that the order substituting Musammat Durga as plaintiff in her stead should not have been made. We give the costs of the appeal to the appellant.

We think it right to say that our judgment in this appeal is not to be taken as in any way prejudicing the right of Musammat Durga to institute any suit she may be advised against the appellant in respect of the mortgaged property.

Appeal decreed.

1907.
November 13.

REVISIONAL CRIMINAL.

Before Mr. Justice Sir George Knox.

EMPEROR *v.* TABARAK ZAMAN KHAN. *

Act No. XLV of 1860 *(Indian Penal Code), sections* 182, 211—*Criminal Procedure Code, section* 195—*Information given to the police alleged to be false—Procedure—Notice.*

Where a District Magistrate upon a report made by the police that information given to them charging a person with a specific crime is false, orders the person giving such information to be prosecuted under section 211 of the Indian Penal Code, such order is not an order to which section 195(*b*) of the Code of Criminal Procedure applies, neither is the order passed without jurisdiction if no previous notice to show cause is given to the accused. The more proper course, however, would be to let the informant bring his witnesses into Court, hear them out, and then, if the case was considered to be a false case, to pass an order that the informant should be tried under section 211 of the Indian Penal Code. *Queen Empress* v. *Ganga Ram* (1), *Emperor* v. *Tula* (2) and *Haibat Khan* v. *Emperor* (3) distinguished.

THE facts of this case are as follows :—

One Tabarak Zaman Khan on the 7th June last sent a letter written by himself through his servant Sumera to the Sub-Inspector of Kampil Police Circle, charging one Sukha Ahir with having committed the offence of theft. The police investigated the case, and, considering the charge not proved, sent in what is known as *naksha B*. They asked that the case might be expunged from the register of crimes and that a case might be

* Criminal Reference No. 585 of 1907, by Muhammad Ishaq Khan, Sessions Judge of Farrukhabad, in respect of an order of D. Calnan, District Magistrate of Farrukhabad, dated the 18th of July 1907.

(1) (1885) I. L. R., 8 All., 38. (2) (1907) I. L. R., 29 All., 587.
(3) (1905) I. L. R., 33 Calc., 31.